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IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

FRANK MARSH, STATE TREASURER, et al.,

Petitioner,

v.

ERNEST CHAMBERS,

Respondent.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

BRIEF OF THE NATIONAL CONFERENCE OF STATE LEGISLATURES AS *AMICUS CURIAE* NOT SUPPORTING EITHER PARTY

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INTEREST OF THE *AMICUS CURIAE*

The National Conference of State Legislatures (NCSL), pursuant to Rule 36.2 of the Rules of the Supreme Court of the United States, submits this brief as *amicus curiae*.

NCSL has received written consent from the parties to file this brief as *amicus curiae*. Copies of these letters have been filed with the Clerk of the Court.

NCSL is the official representative of the nation's 7,500 state legislators and their staffs. It is a nonpartisan organization funded by the states with three basic objectives: to improve the quality and effectiveness of state legislatures; to foster interstate cooperation and communication; and to assure state legislatures a strong, cohesive voice in the federal system.

It is NCSL's belief that the resolution of this litigation could have far-reaching effects not only on the parties to this litigation but upon other state legislatures as well.

NCSL also believes that the record before the Court does not contain information on the relevant practices of legislative bodies other than on those of the legislature of Nebraska. Therefore, NCSL has undertaken a survey of the remaining 98 state legislative bodies to determine their practices and procedures with respect to the offering of prayer in the legislatures and the employment of clergymen or chaplains.

SUMMARY OF ARGUMENT

In late November and early December 1982, NCSL conducted a survey of the practices and procedures relating to the offering of prayer in state legislative bodies and the employment of chaplains or clergymen to offer the prayers. The legislative clerks in each of the 98 legislative bodies were contacted by telephone and asked a series of questions. Nebraska was excluded from the survey since its practices are well documented in the court record. The results of this survey are reported in the following section.

ARGUMENT

SURVEY OF STATE LEGISLATURES ON PRACTICES AND PROCEDURES RELATING TO PRAYER AND THE EMPLOYMENT OF CHAPLAINS AND CLERGYMEN BY STATE LEGISLATIVE BODIES

All state legislative bodies open their sessions with a prayer except for the Massachusetts Senate, which does so only occasionally. Authority to do so is usually found in the rules of the legislative body and is most commonly contained in the rule providing for the order of business. In those states where the rules do not offer specific direction, the prayer is given as a matter of custom or tradition.

The opening legislative prayer may be given by various classes of individuals. They include chaplains, guest clergymen, legislators, and legislative staff members.

A list of states that have regular chaplains serving at least a session of the legislature are listed below. Their compensation is also noted.

Arkansas Senate ($25 per diem)
California Assembly ($400 per month)
California Senate ($600 per month)
Colorado Senate (3 chaplains; 1 rabbi, 2 Protestants) ($18.46 per diem)
Connecticut House of Representatives ($3,000 per session)
Connecticut Senate ($3,000 per session)
Idaho House of Representatives ($15 per diem)
Idaho Senate ($15 per diem)
Kansas House of Representatives ($349-525 per month)
Kansas Senate ($349-525 per month)
Massachusetts House of Representatives ($10,500 per annum)
Missouri House of Representatives (2 chaplains; 1 Protestant, 1 Catholic) ($325 per month)
Missouri Senate ($600 per month)
Montana House of Representatives ($10 per diem)
Montana Senate ($10 per diem)
New Hampshire House of Representatives ($10 per diem)
New Hampshire Senate ($11 per diem)
New York Assembly ($11,600 per annum)
North Carolina House of Representatives ($103 per week)
North Carolina Senate ($103 per week)
Ohio House of Representatives ($4,492.80 per annum)
South Carolina House of Representatives ($5,818 for 6 months, prorated if session exceeds 6 months)
South Carolina Senate ($5,818 per annum)
Texas House of Representatives (no compensation)
Texas Senate (no compensation)
West Virginia Senate ($17 per diem)
Wyoming Senate ($20 per diem)

The remaining legislative houses employ guest ministers or their own members and staff serving for only a day, week, or month. The most common practice is to rely on ministers from the capital city area. All bodies, including those with regular chaplains, honor requests from individual legislators either to give the opening prayer or to invite a constituent minister to conduct the prayer.

All the legislative bodies with regular chaplains permit their reappointment. A few have served for many years but most have

briefer tenures in keeping with their ceremonial status. Leadership changes in the legislative body generally result in the appointment of a new chaplain since it is usually a leadership prerogative.

In the following states, the chaplain is appointed for a session of the legislature:

California Senate
Colorado Senate
Connecticut
Idaho
Kansas
Missouri
Montana
New Hampshire
Texas
Wyoming Senate

The remaining bodies with regular chaplains appoint them for two-year terms except for the South Carolina Senate, which specifies a four-year term.

Legislatures in the following 16 states provide no compensation to chaplains or clergymen:

Alabama
Arizona House of Representatives
Arkansas House of Representatives
Hawaii
Indiana
Kentucky ($1,800 annually is donated to local ministerial association)
Louisiana
Michigan
Mississippi
Oregon
Rhode Island
Tennessee (clergyman receives certificate)
Texas
Utah
Virginia (Senate provides mileage allowance and House gives token gift)
West Virginia House of Representatives ($15 honorarium on occasional basis)

The remaining legislatures provide some type of payment or per diem for their guest clergymen.

Alaska ($40-50 per diem)
Arizona Senate ($10 per diem)
Colorado House of Representatives ($18.46 per diem)
Delaware ($25 per diem)
Florida ($40 per diem)
Georgia ($25 per diem)
Illinois House of Representatives ($30 per diem)
Illinois Senate ($25 per diem if clergyman is local, $50 if from out of town)
Iowa ($10 per diem)
Maine House of Representatives ($25 per diem)
Maine Senate ($10 per diem)
Maryland ($15 per diem)
Massachusetts Senate ($40 per diem on occasions when prayer is given)
Minnesota House of Representatives ($22 per diem)
Minnesota Senate ($25 per diem)
Nevada ($20 per diem)
New Jersey General Assembly ($75 per diem)
New Jersey Senate ($75 per diem)
New Mexico ($5 per diem)
New York Senate ($35 per diem)
North Dakota ($25 per diem)
Oklahoma House of Representatives ($44 per diem)
Oklahoma Senate ($125 per week)
Pennsylvania House of Representatives ($750 per month)
Pennsylvania Senate ($40 per diem)
South Dakota ($10 per diem donated to ministerial association)
Vermont ($5 per diem)
Washington ($15 per diem)
West Virginia House of Delegates ($15 per diem on occasional basis)
Wisconsin Assembly ($5 per diem)
Wisconsin Senate ($10 per diem)

The funds to pay the per diem of guest clergymen or the compensation to pay for regular chaplains is taken from the legislative budgets of the states.

Only a few legislative bodies actually print a separate document containing prayers. In most instances, a journal entry notes

that the prayer was given. Some legislatures print the text of the prayer in the journal. Those states currently publishing the prayer in a special document include:

California
Georgia House of Representatives
Kansas Senate
Ohio House of Representatives
South Carolina

CONCLUSION

NCSL takes no position and draws no conclusions as to the constitutionality or legality of any state's practices or procedures, nor does it support the position of either litigant. Instead, it merely reports the survey results for the consideration of the Court.

Dated at Denver, Colorado this 15th day of December, 1982.

Respectfully submitted,

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